

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

SCOE ASSOCIATES  
Respondent

Case No.: I-00-40357

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**ORDER**

An Amended Final Order was issued in the captioned matter on January 18, 2002 (the January 18<sup>th</sup> Order”). Pursuant to the January 18<sup>th</sup> Order, which included a Proposed Decision pursuant to 29 DCMR 307.4 that affirmed the proposed non-renewal of Respondent’s license in the companion case (No. C-01-80065), the parties were permitted to file and serve comments “on any aspect of this opinion (including the Proposed Order) that is material to the license non-renewal sought by the Government and proposed to be affirmed by this administrative court . . .” *DOH v. Scoe Associates*, OAH No. I-00-40357 at 31 (Amended Final Order and Proposed Decision, January 18, 2002).

On January 30, 2002, this administrative court received comments from Respondent and the Government.<sup>1</sup> In its comments, Respondent, through its owner Sylvester Okpala, requested a reduction in the \$550 in fines imposed by the January 18<sup>th</sup> Order. In support of its request,

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<sup>1</sup> Those comments from the parties regarding the Proposed Decision in Case No. C-01-80065 are addressed by separate order.

Respondent stated that its business “has been basically shut down for the past six months and we cannot afford these fines at this time.” Respondent’s Comments at 2. In its comments, the Government opposed Respondent’s request for a reduction of fines on the grounds that, contrary to Respondent’s representation, “the facility has been in operation throughout the pendency of these proceedings.” Government’s Comments at 2. I construe Respondent’s submission, as it pertains to a reduction in the fines imposed by the Amended Final Order in Case No. I-00-40357, to be an application for relief from judgment based on the consideration of additional circumstances, *i.e.*, Respondent’s alleged economic hardship. *See* Super. Ct. R. 60(b); *Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993) (comparing post-judgment motions under Rules 59(e) and 60).

Respondent’s representation that it cannot afford to pay the fine as ordered at this time is not one of the narrow circumstances that could serve as a basis for the type of post-judgment relief Respondent seeks.<sup>2</sup> *See Fleming*, 633 A.2d at 849. Respondent may, however, submit a request for a payment plan pursuant to D.C. Official Code § 2-1801.03(b)(5).

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<sup>2</sup> Rule 60 provides in relevant part:

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.

On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year

It is, therefore, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent's application for reconsideration of this administrative court's January 18, 2002 Amended Final Order in Case No. I-00-40357 is hereby **DENIED**; and it is further

**ORDERED**, that Respondent shall pay fines in the total amount of **FIVE HUNDRED FIFTY DOLLARS (\$550)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, except as otherwise specified in this Order, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

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after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis and audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action.

**ORDERED**, that Respondent may submit a request for a payment plan within five (5) business days of the mailing date of this Order. Respondent should include with its request for a payment plan copies of its most recent federal or District of Columbia tax return, and any recent bank statements or relevant balance sheets and/or cash flow statements from its business, or any other documentation or affidavits regarding its business that demonstrate limited financial resources or other reasons why it cannot reasonably afford to pay the outstanding \$550 in fines at one time. A timely request for a payment plan will stay Respondent's obligation to pay the imposed fines pending the disposition of its request; and it is further

**ORDERED**, that, except as otherwise specified in this Order, failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/      **2/5/02**

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Mark D. Poindexter  
Administrative Judge